

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:09-CV-181-D

REX T. GILBERT, JR. and DANIELA L.
GILBERT,

Plaintiffs,

v.

DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS, INC.,
DAVID A. SIMPSON, P.C., SUBSTITUTE
TRUSTEE, RESIDENTIAL FUNDING, LLC,
GMAC MORTGAGE, LLC, AND OCWEN
LOAN SERVICING, LLC

Defendants.

**DEFENDANTS DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE
FOR RESIDENTIAL ACCREDIT LOANS, INC. SERIES 2006-QA6 AND OCWEN
LOAN SERVICING, LLC'S REPLY TO THE GILBERTS' RESPONSES AND
OBJECTIONS TO DEFENDANTS' STATEMENT OF MATERIAL FACTS**

NOW COME Defendants Deutsche Bank Trust Company Americas, As Trustee For Residential Accredit Loans, Inc. Series 2006-QA6 ("Deutsche Bank") and Ocwen Loan Servicing, LLC ("Ocwen") (collectively, "Defendants"), by and through their counsel of record, and respectfully submit this Reply to the Gilberts' Responses and Objections to Defendants' Statement of Material Facts in Support of Defendants' Motion for Partial Summary Judgment. To the extent that Plaintiffs attempt to assert new material facts into their responses and objections to Paragraphs 9, 11, and 14, Defendants disagree and object, as noted further below.

STATEMENT OF MATERIAL FACTS

9. According to Plaintiffs' expert, Dr. Richard S. Warr, the APR should have been 7.718%, the Amount Financed should have been \$516,639.24, and the Finance Charge should have been \$922,557.45. (Defs.' Mot. Summ. J. Ex. A-1, at 4.)

Plaintiffs' Response (ECF No. 114): *Plaintiffs agree that Plaintiffs' expert determined that the Amount Financed should have been \$922,557.45 (Defs.' Mot. Summ. J. Ex.A-1, at 4.)*

Defendants' Reply: Defendants disagree with Plaintiffs' Response to Paragraph 9. Defendants did not originally assert and do not agree that Plaintiffs' expert determined that the Amount Financed should have been \$922,557.45.

11. The TIL Statement understated the amount financed and overstated the finance charge. (Id.)

Plaintiffs' Response (ECF No. 114): *Plaintiffs agree that the amount finance was understated, in and of itself, without reference to the finance charge. Neither expert was able to arrive at the disclosed amount finance. [D.E. 99, ex1 and Ex 2]. The disclosed amount financed was not simply a matter of an identifiable item or charge deducted from the amount financed. The disclosed amount financed is principal amount of loan minus the total amount of closing costs and more.*

Defendants' Reply: Defendants disagree with Plaintiffs' Response to Paragraph 11. Defendants did not originally assert and do not agree that the amount financed was understated, in and of itself, without reference to the finance charge; that neither expert was able to arrive at the disclosed amount financed; that the disclosed amount financed was not simply a matter of an identifiable item or charge deducted from the amount finance; and that the disclosed amount financed was the principal amount of loan minus the total amount of closing costs and more.

14. The LIBOR rate as of May 2, 2006, was 5.289%. (Defs.' Mot. Summ. J. Ex. A-2, at 1.)

Plaintiffs' Response (ECF No. 114): *Plaintiffs agree that the note sets out the method for calculating the change and that the closing date is a change date [D.E. 74, Ex2, p2]*

Defendants' Reply: Defendants disagree with Plaintiffs' Response to Paragraph 14. Defendants did not originally assert and do not agree that the note states that the closing date is a change date.

Respectfully submitted, this the 29th day of June, 2016.

BRADLEY ARANT BOULT CUMMINGS, LLP

/s/ Mark S. Wierman

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LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2016, I served this **DEFENDANTS DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR RESIDENTIAL ACCREDIT LOANS, INC. SERIES 2006-QA6 AND OCWEN LOAN SERVICING, LLC'S REPLY TO THE GILBERTS' RESPONSES AND OBJECTIONS TO DFENDANTS' STATEMENT OF MATERIAL FACTS** on the following parties by email and by depositing a copy enclosed in a post-paid, property addressed envelope by US Postal Service:

Kathryn Parker-Lowe
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Ocracoke, North Carolina 27960

David A. Simpson, P.C.
Substitute Trustee
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/s/ Mark S. Wierman
Mark S. Wierman
ATTORNEY FOR DEFENDANTS